



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): 3/17/2021

ORM Number: MVP-2021-00094-CCK

Associated JDs: N/A

Review Area Location<sup>1</sup>: State/Territory: Minnesota City: Toad Lake County/Parish/Borough: Becker

Center Coordinates of Review Area: Latitude 46.9167544 Longitude -95.5107192 W

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

**C. Clean Water Act Section 404**

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): <sup>3</sup>			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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**D. Excluded Waters or Features**



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup> The review area for this determination is limited to the delineated boundaries of 13 wetland areas labeled as Wetland A, Wetland B, Wetland F, Wetland K, Wetland O, Wetland T, Wetland U, Wetland V, Wetland W, Wetland X, Wetland Y, Wetland BB, and Wetland CC on the attached figures labeled 2021-00094-CCK, Becker County Highway 38, Pages 2-6.				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Wetland A	0.006	acre(s)	(b)(1) Non-adjacent wetland.	Wetland A contains an isolated wetland on the east side of County Highway 37. A review of the data sources in Section III.A indicates that the wetland is geographically isolated and physically separated from potential downstream waters.
Wetland B	0.04	acre(s)	(b)(1) Non-adjacent wetland.	Wetland B contains an isolated wetland on the north side of County Highway 37, at the intersection with two private driveways. A review of the data sources in Section III.A indicates that the wetland is geographically isolated and physically separated from potential downstream waters.
Wetland F	0.03	acre(s)	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Wetland F is a roadside ditch that was constructed in uplands and is now a linear wetland.
Wetland K	0.03	acre(s)	(b)(1) Non-adjacent wetland.	Wetland K contains an isolated wetland on the southeast side of County Highway 37. A review of the data sources in Section III.A indicates that the wetland is geographically isolated and physically separated from potential downstream waters.
Wetland O	0.0008	acre(s)	(b)(1) Non-adjacent wetland.	Wetland O contains an isolated wetland on the east side of County Highway 37. A review of the data sources in Section III.A indicates that the wetland is geographically isolated and physically separated from potential downstream waters.
Wetland T	0.007	acre(s)	(b)(1) Non-adjacent wetland.	Wetland T contains an isolated wetland on the east side of County Highway 37. A review of the data sources in Section III.A indicates that the wetland is geographically isolated and physically separated from potential downstream waters.
Wetland U	0.009	acre(s)	(b)(1) Non-adjacent wetland.	Wetland U contains an isolated wetland on the corner of County Highway 37 and 420 Avenue. A review of the data sources in Section III.A indicates that the wetland is geographically isolated and physically separated from potential downstream waters.
Wetland V, W, X	0.045	acre(s)	(b)(1) Non-adjacent wetland.	Wetland V, Wetland W, and Wetland X contain isolated wetlands on the north and south sides of County Highway 37, near the intersection with a private driveway. A review of the data sources in Section III.A indicates that the wetland is geographically isolated and physically separated from potential downstream waters.



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Wetland Y, BB	0.064	acre(s)	(b)(1) Non-adjacent wetland.	Wetland Y and Wetland BB contain isolated wetlands on the north side of County Highway 37, near the intersection with a private driveway. A review of the data sources in Section III.A indicates that the wetland is geographically isolated and physically separated from potential downstream waters.
Wetland CC	0.003	acre(s)	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Wetland CC is a roadside ditch that was constructed in uplands and is now a linear wetland.

### III. SUPPORTING INFORMATION

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- ☒ Information submitted by, or on behalf of, the applicant/consultant: [Wetland Delineation Report \(by Environmental Scientific, Inc\)](#) and [Permit Application for Becker County Highway 37 Improvements Project](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

- ☐ Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- ☒ Photographs: [Aerial: Google Earth Imagery, \(1938-2015\)](#)
- ☐ Corps site visit(s) conducted on: [Date\(s\)](#).
- ☐ Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\)](#).
- ☐ Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- ☐ USDA NRCS Soil Survey: <http://websoilsurvey.nrcs.usda.gov/>
- ☒ USFWS NWI maps: [USFWS NWI of MN, 1974-1978](#)
- ☒ USGS topographic maps: [1:24k USGS Ponsford Quadrangle](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">N/A.</a>
<a href="#">USDA Sources</a>	<a href="#">N/A.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">USACE Sources</a>	<a href="#">N/A.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>
<a href="#">Other Sources</a>	<a href="#">N/A.</a>

**B. Typical year assessment(s):** [N/A or provide typical year assessment for each relevant data source used to support the conclusions in the AJD.](#)

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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**C. Additional comments to support AJD:** The review area for this determination is limited to the delineated boundaries of 13 wetland areas labeled as Wetland A, Wetland B, Wetland F, Wetland K, Wetland O, Wetland T, Wetland U, Wetland V, Wetland W, Wetland X, Wetland Y, Wetland BB, and Wetland CC on the attached figures labeled 2021-00094-CCK, Becker County Highway 38, Pages 2-6. The total area of non-jurisdictional waters within the review area is approximately 0.2348 acres of wetlands.

All of the wetlands within the review area meet the definition of “wetlands” under paragraph (c)(16) and are not (a)(4) waters because they do not meet the definition of “adjacent wetlands” under paragraph (c)(1).

Wetland A contains an isolated depressional wetland surrounded by uplands. A review of the data sources in Section III.A indicates that this wetland is geographically isolated and physically separated from potential downstream waters. Topography lines, LiDAR contours and color changes on USGS topo maps demonstrate this wetland areas is surrounded by uplands. Wetland A is bounded by County Highway 37 to the west, County Highway 34 to the south and by uplands on the other two sides. Sivertson Lake is located across County Highway 34 to the south, approximately 1,500 feet from Wetland A. There are no culvert or culvert(s) conveying surface water flows through the bisecting roadways providing direct hydrologic connection to Sivertson Lake or any downstream (a)(1)-(a)(3) waters. Additionally, Wetland A does not abut the lake, does not appear to be inundated by flooding from the (a)(3) water, and no evidence has been found of an artificial structure, such as a culvert underneath the bisecting roadway, that allows for a direct hydrologic surface connection. Based on this review, Wetland A is not jurisdictional under the under the Navigable Waters Protection Rule (NWPR) because it meets the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). This assessed wetland does not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.

Wetland B contains an isolated depressional wetland surrounded by uplands. A review of the data sources in Section III.A indicates that this wetland is geographically isolated and physically separated from potential downstream waters. Topography lines, LiDAR contours and color changes on USGS topo maps demonstrate this wetland areas is surrounded by uplands. Wetland B is bounded by County Highway 37 to the south, and private driveways on the other three sides. Sivertson Lake is located across County Highway 34 and County Highway 37 to the south, approximately 1,600 feet from Wetland B. There are no culvert or culvert(s) conveying surface water flows through the bisecting roadways providing direct hydrologic connection to Sivertson Lake or any downstream (a)(1)-(a)(3) waters. Additionally, Wetland B does not abut the lake, does not appear to be inundated by flooding from the (a)(3) water, and no evidence has been found of an artificial structure, such as a culvert underneath the bisecting roadway, that allows for a direct hydrologic surface connection. Based on this review, Wetland B is not jurisdictional under the under the NWPR because it meets the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). This assessed wetland does not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.

Wetland F was constructed in uplands to convey runoff from the adjacent roadway, and is now a linear



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wetland that meet the definition of "ditch" under paragraph (c)(2). Historic aerial imagery from 1939 (oldest available) indicates that the ditch was not constructed in an (a)(4) water and the ditch was surrounded by uplands when constructed. In addition, the ditch is not an (a)(1) waters, is not a relocated tributary, and is not constructed in a tributary. This wetland is a linear wetland parallel to an existing roadway and does not extend beyond the delineated proposed construction ROW area(s), based off the delineation report, NWI maps, topo maps and aerial photos. Based on this review, Wetland F is not jurisdictional under the NWPR because it meets the requirements of the exclusion for (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).

Wetland K contains an isolated depressional wetland surrounded by uplands. A review of the data sources in Section III.A indicates that this wetland is geographically isolated and physically separated from potential downstream waters. Wetland K is bounded by County Highway 37 to the northwest and uplands on the other three sides as evidenced by aerial photos, topography lines, LiDAR contours and color changes on USGS topo maps . Small depressional ponds are located in the vicinity, but the closest downstream (a)(1)-(a)(3) waters are Sivertson Lake located approximately 1 mile southwest or Toad Lake located approximately 1.7 miles southeast. Wetland K does not abut the lake(s), does not appear to be inundated by flooding from the (a)(3) water, and no evidence has been found of an artificial structure that allows for a direct hydrologic surface connection. Based on this review, Wetland K is not jurisdictional under the under the NWPR because it meets the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). This assessed wetland does not abut jurisdictional waters, is not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and is not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.

Wetland O contains an isolated depressional wetland surrounded by uplands. A review of the data sources in Section III.A indicates that this wetland is geographically isolated and physically separated from potential downstream waters. Wetland O is bounded by County Highway 37 to the west, Schoolhouse Road to the south and uplands on the other two sides as evidenced by aerial photos, topography lines, LiDAR contours and color changes on USGS topo maps . Small depressional ponds are located in the vicinity, but the closest downstream (a)(1)-(a)(3) waters is Island lake located approximately  $\frac{3}{4}$  of a mile northwest of Wetland O, across Highway 37. There are no culvert or culvert(s) conveying surface water flows through the bisecting roadway providing direct hydrologic connection to Island Lake or any downstream (a)(1)-(a)(3) waters. Wetland O does not abut the lake(s), does not appear to be inundated by flooding from the (a)(3) water, and no evidence has been found of an artificial structure that allows for a direct hydrologic surface connection. Based on this review, Wetland O is not jurisdictional under the under the NWPR because it meets the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). This assessed wetland does not abut jurisdictional waters, is not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and is not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.

Wetland T contains an isolated depressional wetland surrounded by uplands. A review of the data sources in Section III.A indicates that this wetland is geographically isolated and physically separated from potential downstream waters. Wetland T is bounded by County Highway 37 to the west, a private driveway to the south and uplands on the other two sides as evidenced by aerial photos, topography lines, LiDAR contours and color changes on USGS topo maps . The closest downstream (a)(1)-(a)(3) waters is Island lake





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located approximately  $\frac{3}{4}$  of a mile west of Wetland T, across Highway 37. There are no culvert or culvert(s) conveying surface water flows through the bisecting roadway providing direct hydrologic connection to Island Lake or any downstream (a)(1)-(a)(3) waters. Wetland T does not abut the lake(s), does not appear to be inundated by flooding from the (a)(3) water, and no evidence has been found of an artificial structure that allows for a direct hydrologic surface connection. Based on this review, Wetland T is not jurisdictional under the under the NWPR because it meets the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). This assessed wetland does not abut jurisdictional waters, is not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and is not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.

Wetland U contains an isolated depressional wetland surrounded by uplands. A review of the data sources in Section III.A indicates that this wetland is geographically isolated and physically separated from potential downstream waters. Wetland T is bounded by County Highway 37 to the east, a private driveway to the north and uplands on the other two sides as evidenced by aerial photos, topography lines, LiDAR contours and color changes on USGS topo maps. The closest downstream (a)(1)-(a)(3) waters is Island lake located approximately  $\frac{3}{4}$  of a mile west of Wetland T, across E. Island Lake Road. There are no culvert or culvert(s) conveying surface water flows through the bisecting roadway providing direct hydrologic connection to Island Lake or any downstream (a)(1)-(a)(3) waters. Wetland U does not abut the lake(s), does not appear to be inundated by flooding from the (a)(3) water, and no evidence has been found of an artificial structure that allows for a direct hydrologic surface connection. Based on this review, Wetland U is not jurisdictional under the under the NWPR because it meets the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). This assessed wetland does not abut jurisdictional waters, is not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and is not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.

Wetland(s) V, W, and X contains isolated depressional wetlands surrounded by uplands. A review of the data sources in Section III.A indicates that these wetlands are geographically isolated and physically separated from potential downstream waters. Wetland X is bounded by County Highway 37 to the west, a private driveway to the north and uplands on the other two sides as evidenced by aerial photos, topography lines, LiDAR contours and color changes on USGS topo maps. Wetland V and Wetland W are bounded by County Highway to the east and uplands on the other two sides. The closest (a)(1)-(a)(3) water is Shell Lake located approximately 1 mile northeast of these wetlands. There are no culvert or culvert(s) conveying surface water flows through the bisecting roadway providing direct hydrologic connection to Shell Lake or any downstream (a)(1)-(a)(3) waters. Wetland(s) V, W, and X do not abut the lake(s), do not appear to be inundated by flooding from the (a)(3) water, and no evidence has been found of an artificial structure that allows for a direct hydrologic surface connection. Based on this review, Wetland(s) V, W, and X are not jurisdictional under the under the NWPR because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). These assessed wetlands do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.



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Wetland(s) Y and BB contains isolated depressional wetlands surrounded by uplands. A review of the data sources in Section III.A indicates that these wetlands are geographically isolated and physically separated from potential downstream waters. Wetland Y is bounded by County Highway 37 to the east, a private driveway to the north, and uplands on the other two sides as evidenced by aerial photos, topography lines, LiDAR contours and color changes on USGS topo maps. Wetland BB is bounded by County Highway to the east, a private driveway to the south, and uplands on the other two sides. The closest (a)(1)-(a)(3) water is Shell Lake located approximately 1/2 mile northeast of these wetlands. There are no culvert or culvert(s) conveying surface water flows through the bisecting roadway providing direct hydrologic connection to Shell Lake or any downstream (a)(1)-(a)(3) waters. Wetland(s) Y and BB do not abut the lake(s), do not appear to be inundated by flooding from the (a)(3) water, and no evidence has been found of an artificial structure that allows for a direct hydrologic surface connection. Based on this review, Wetland(s) Y and BB are not jurisdictional under the under the NWPR because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). These assessed wetlands do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.

Wetland CC was constructed in uplands to convey runoff from the adjacent roadway, and is now a linear wetland that meet the definition of "ditch" under paragraph (c)(2). Historic aerial imagery from 1939 (oldest available) indicates that the ditch was not constructed in an (a)(4) water and the ditch was surrounded by uplands when constructed. In addition, the ditch is not an (a)(1) waters, is not a relocated tributary, and is not constructed in a tributary. This wetland is a linear wetland parallel to an existing roadway and does not extend beyond the delineated proposed construction ROW area(s), based off the delineation report, NWI maps, topo maps and aerial photos. Based on this review, Wetland CC is not jurisdictional under the NWPR because it meets the requirements of the exclusion for (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).

This was confirmed by reviewing aerial photography, national hydrography data, and topographic data. Based on this review, the assessed ditches are not jurisdictional under the Navigable Waters Protection Rule because they meet the requirements of the exclusion for ditches under paragraph (b)(5).